

**Introduced by Senator Leno**

February 19, 2016

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An act to add Section 3055 to the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 1310, as introduced, Leno. Elderly Parole Program.

Existing law requires the Board of Parole Hearings to meet with an inmate during the 6th year prior to the inmate's minimum eligible parole release date to document the inmate's activities and conduct pertinent to parole eligibility. Existing law, the Victims' Bill of Rights Act of 2008: Marsy's Law, as added by Proposition 9 at the November 4, 2008, statewide general election, requires the panel, or the board if sitting en banc, to set a release date at the meeting, unless it determines that consideration of the public and victim's safety requires a more lengthy period of incarceration, and that a parole date cannot be fixed at the meeting. Existing law requires the board to schedule the next parole consideration hearing 15, 10, 7, 5, or 3 years after any hearing at which parole is denied. Existing law allows the board to advance a hearing set pursuant to these provisions to an earlier date when a change in circumstances or new information establishes a reasonable likelihood that consideration of the public and victim's safety does not require an additional period of incarceration.

Existing law, as added by Proposition 184, adopted November 8, 1994, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes Law, imposes increased penalties for certain recidivist offenders. In particular, it requires that, in addition to any other enhancement or penalty provisions that may apply, if a defendant has 2 or more prior felony convictions, the term for the current felony conviction shall be an indeterminate term of imprisonment in

the state prison for life with a minimum term of the greatest of 3 times the term otherwise provided as punishment for each current felony conviction subsequent to the 2 or more prior felony convictions, imprisonment in the state prison for 25 years, or the term determined by the court for the underlying conviction, including any applicable enhancement or punishment provisions. The initiative measure enacting the Three Strikes Law prohibits the Legislature from amending the act except by a statute passed by a  $\frac{2}{3}$  vote or by a statute that becomes effective only when approved by the electors.

This bill would establish the Elderly Parole Program, for prisoners who are 50 years of age or older, who have served 15 years of their sentence, and who have a reentry plan identifying residential, financial, and social integration plans. When considering the release of an inmate who meets this criteria, the bill would require the board to consider whether age, time served, and diminished physical condition, if any, have reduced the elderly prisoner's risk for future violence. The bill would also require the Board of Parole Hearings to consider whether a prisoner will qualify for the program when determining the prisoner's next parole suitability hearing.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) On February 10, 2014, the three-judge court overseeing the
- 4 California prison overcrowding class action case (Coleman v.
- 5 Brown (2013) 952 F.Supp.2d 901) issued an order that, among
- 6 other things, requires the state to implement an Elderly Parole
- 7 Program so that prisoners who are 60 years of age or older and
- 8 who have been incarcerated at least 25 years on their current
- 9 sentence will be referred to the Board of Parole Hearings (BPH)
- 10 to determine suitability for parole. The BPH implemented this
- 11 Elderly Parole Program on October 1, 2014.
- 12 (b) Under the existing Elderly Parole Program hearings,
- 13 prisoners who are 60 years of age or older and who have been
- 14 incarcerated 25 years or more on their current sentence serving
- 15 either a determinate or indeterminate sentence, and who have not
- 16 yet had an initial parole suitability hearing are referred by the

1 California Department of Corrections and Rehabilitation (CDCR)  
2 to the BPH and scheduled for an Elderly Parole Program Suitability  
3 hearing.

4 (c) Under the existing Elderly Parole Program hearings,  
5 prisoners who are 60 years of age or older and who have been  
6 incarcerated 25 years or more on their current term and who have  
7 already been denied parole at the initial suitability hearing are  
8 considered for a new hearing under the Elderly Parole Program.

9 (d) The BPH currently reviews all three-year denials annually  
10 to determine if a more prompt parole consideration hearing should  
11 be considered. Under the existing Elderly Parole Program, the  
12 BPH includes within that annual review whether any prisoner  
13 meets the elder parole eligibility criteria, and if so whether to  
14 schedule a hearing.

15 (e) Under the existing Elderly Parole Program, prisoners who  
16 have lengthier denial periods can file petitions with the BPH asking  
17 that their hearing be advanced because they meet the eligibility  
18 criteria for elder parole.

19 (f) The BPH may deny parole if an elderly prisoner's release  
20 would pose an unreasonable risk of danger to public safety. Parole  
21 suitability hearing decisions for elderly parole inmates are reviewed  
22 in the same manner as all other parolees under eligibility  
23 consideration, pursuant to criteria specified by Section 2281 of  
24 Title 15 of the California Code of Regulations. However, for all  
25 Elderly Parole Program hearings, the BPH risk assessments  
26 consider whether age, time served, and diminished physical  
27 condition, if any, reduce elderly prisoners' risk for future violence.

28 (g) The number of elderly prisoners in California state prisons  
29 will continue to increase exponentially. In 2013, the CDCR  
30 reported a population of prisoners 50 years of age and older as  
31 27,580 and the population of prisoners 55 years of age and older  
32 as 14,856.

33 (h) Costs associated with geriatric medical needs begin to  
34 accumulate at 50 years of age, given that there is an overwhelming  
35 consensus that the age of 50 constitutes a point when prisoners are  
36 considered elderly. In 2010, the LAO estimated from other state  
37 projections that incarcerating elderly offenders costs two to three  
38 times more than for the general prison population. In 2010, the  
39 average cost of incarcerating an inmate was approximately \$51,000.

1 (i) Older persons have significantly low arrest rates. In 2001,  
2 the federal arrest rate for persons 40 to 44, inclusive, years of age  
3 was 0.73 percent. The rate decreases by about one-half every five  
4 years, dropping to 0.46 percent for persons 45 to 49, inclusive,  
5 years of age and 0.26 percent for persons 50 to 54, inclusive, years  
6 of age. For persons 50 to 59, inclusive, years of age, the arrest rate  
7 plummets to 0.14 percent.

8 (j) There is a lower risk of recidivism among elderly prisoners,  
9 according to CDCR statistics. In 2013, CDCR reported that only  
10 33.8 percent of persons who were 60 years of age and older,  
11 returned to prison after one year from being released from prison.  
12 Recidivism rates for persons 50 to 54, inclusive, years of age and  
13 55 to 59, inclusive, years of age after one year from being released  
14 from prison were 39.9 and 38.3 percent, respectively.

15 SEC. 2. Section 3055 is added to the Penal Code, to read:

16 3055. (a) The Elderly Parole Program is hereby established,  
17 to be administered by the Board of Parole Hearings.

18 (b) A prisoner shall be considered for parole under the Elderly  
19 Parole Program if he or she meets all of the following conditions:

20 (1) The prisoner is 50 years of age or older.

21 (2) The prisoner has served 15 years of his or her sentence.

22 (3) The prisoner has a reentry plan identifying residential,  
23 financial, and social integration plans.

24 (c) When considering the release of a prisoner specified by  
25 subdivision (b) pursuant to Section 3041, the board shall give  
26 special consideration to whether age, time served, and diminished  
27 physical condition, if any, have reduced the elderly prisoner's risk  
28 for future violence.

29 (d) When scheduling a parole suitability hearing date pursuant  
30 to subdivision (b) of Section 3041.5 or when considering a request  
31 for an advance hearing pursuant to subdivision (d) of Section  
32 3041.5, the board shall consider whether the prisoner meets or will  
33 meet the criteria specified in subdivision (b).